

Appl. No. 10/620,409
After Final Amendment in Response to
Advisory Action of July 29, 2005

REMARKS

Claims 1-15 are currently pending. In the Final Office Action of April 29, 2005, the Examiner rejected Claims 1-15 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,976,084 to Weber ("Weber"). In light of the above rejection, Jack Cook, Outside Counsel for Applicants, participated in a June 16, 2005 telephone interview with Examiner Nathan Mammen. Specifically, Applicants and Examiner Mammen discussed proposed amendments to the claims, focusing on an amendment to Claim 1. Subsequent to the June 16, 2005 Examiner Interview, Applicants responded with a June 22, 2005 "After-Final Amendment and Interview Summary" ("After-Final Amendment").

Within the After-Final Amendment, the Applicants proposed amendments to Claims 1, 9, and 13. More specifically, in regard to Claim 1 and in light of the June 16, 2005 Examiner Interview, the Applicants amended the claim to remove the previous February 21, 2005 amendment; a new additional amendment was presented. Claim 1 was amended to, in part, call for "each of the blades [to] include[] a radially outermost tip portion which has a predetermined extent in the rotational direction that is substantially flat." (Emphasis added). Claim 1 continues by calling for the predetermined extent to be "greater in size than an extent of other portions of the blade in the rotational direction" for the purpose of ensuring "that the threshing portion of the surface can abrade away by an amount just less than the predetermined extent while the radial extent of the blade remains substantially constant."

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In response to the proposed amendment presented in the After-Final Amendment, the Examiner issued an "Advisory Action Before the Filing of an Appeal Brief" ("Advisory Action"). In the Advisory Action, the Examiner noted that "Applicant's proposed amendment to Claim 1 would make that claim allowable over the prior art." Accordingly, in light of the Examiner's indication that the limitation added to Claim 1 would make that claim allowable over the prior art, the Applicants herein re-present the amendment to Claim 1 and further amend independent Claims 10 and 13 in an identical manner. In support of the above amendments relative to the prior art, the Applicants offer the following rationale as it relates to the rejection of Claims 1-15 under 35 U.S.C. §103(a) as being unpatentable over Weber.

The amended claimed configuration of Claims 1, 10, and 13, and the advantages that flow therefrom, are explained in the Specification and shown in Fig. 7. Specifically, the Specification states that "tip portions 86 each preferably have a predetermined thickness or extent G in direction A which is greater compared to the extent of most other portions of blade 47 in direction A" and "[a]s a result, even as tip portion 86 wears or abrades away, as illustrated by dotted line 86' in Fig. 7, the radial extent E of blade 47 will remain substantially the same." ¶[0025]. To this end, Fig. 7 shows that the outermost tip portions 86 have flat end portions that extend in direction A, as identified by thickness G. Accordingly, should a given blade begin to wear or abrade away, as illustrated by reference number 86', the radial extent E of the blade 47 will remain substantially constant and thereby sustain the desired threshing and propelling of tailings through the conveyor.

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On the other hand, as clearly shown in Fig. 4 of Weber, the rasp bars 106 that form the ends of each vane are clearly not substantially flat, as called for in Claims 1, 10, and 13. Rather, as acknowledged by the Examiner, Weber clearly discloses that its rasp bars 106 are rounded. See Final Office Action of April 29, 2005, pg. 3. However, the Examiner concluded that since flat rasp bars are known, such a modification would be obvious to one of ordinary skill. Applicants respectfully disagree with this conclusion.

Though flat rasp bars may be known, the Examiner has not provided any teaching or suggestion to support the substitutions of flat rasp bars for the rounded rasp bars taught by Weber. Rather, the only motivation of record for such a substitution can be found in Applicants' own disclosure. See Application, ¶[0025]. Therefore, at best, the only motivation of record requires the rejection to rely upon impermissible hindsight. See MPEP §2145. In fact, the very teachings of Weber would lead one away from the claimed configuration.

By teaching that the blade tips should be rounded, Weber, in essence, teaches that the blade tips should be designed to include what is tantamount to "pre-wearing". In particular, by rounding the tips, Weber teaches that the blade tips should have a shape substantially similar to the worn blade illustrated in Fig. 7 of the present application. That is, Weber teaches that the blade tips should be constructed to include wear such as that illustrated by reference numeral 86' of Fig. 7. Accordingly, Weber cannot be said to teach or suggest the claimed configuration that protects against premature shortening of the blade. Rather, Weber teaches an impeller configuration

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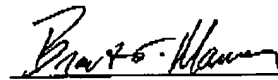
that would promote premature wearing due to the "pre-worn" rounded tips.

For at least these reasons, amended independent Claims 1, 10, and 13 are patentably distinct from the art of record and are thus believed to be in position for allowance. Accordingly, Claims 2-9, 11-12, and 14-15, which depend from Claims 1, 10, and 13, respectively, are also as believed to be allowable as being dependent upon allowable base claims.

Regarding Claims 9, 11, and 14, Applicants have amended the claims to remove subject matter that was, at least partially, redundant in light of the amendments to Claims 1, 10, and 13.

In summary, and in accordance with the foregoing amendments and Remarks, it is believed that pending Claims 1-15 are in condition for allowance. As such, Applicants request timely issuance of a Notice of Allowance. However, should the Examiner believe any issue to be unresolved, the Examiner is cordially invited to contact the undersigned at the telephone number appearing below in an effort to advance the prosecution of this application.

Respectfully submitted,



Attorney for the Applicants
Brant T. Maurer
Reg. No. 53,285

CNH America LLC
Intellectual Property Law Dept.
700 State Street
Racine, Wisconsin 53404
(262) 636-5368